

**ADMINISTRATIVE RECORD**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII, MONTANA OFFICE  
FEDERAL BUILDING, 301 S. PARK, DRAWER 10096  
HELENA, MONTANA 59626-0096

*Russ*

Ref: 8MO

1189535 - R8 SDMS

GENERAL NOTICE LETTER AND INFORMATION REQUEST  
URGENT LEGAL MATTER - - PROMPT REPLY NECESSARY  
CERTIFIED MAIL RETURN RECEIPT REQUESTED

April 4, 1989

Mr. Arthur Zaegel  
Burlington Northern Railroad Company  
3800 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102

RE: General Notice Letter and Information Request Concerning  
Silver Bow Creek/Butte Area Superfund Site  
Silver Bow County, Montana

Dear Mr. Zaegel:

NOTICE OF POTENTIAL LIABILITY

This letter notifies the Burlington Northern Railroad Company of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9607(a), as amended, that you may incur or may have incurred with respect to the above referenced site. This letter also notifies you of potential response activities at the site, which you may be asked to perform or finance at a later date. In addition, this letter includes a request for information pursuant to Section 104(e) of CERCLA 42 U.S.C. Section 9604(e).

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Silver Bow Creek/Butte Area Superfund site. EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the site. Unless EPA reaches an agreement under which a potentially liable party or parties will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA 42 U.S.C. Section 9604, and/or require the conduct of the Remedial Investigation/Feasibility Study (RI/FS) through the issuance of a unilateral administrative order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a), Section 7003 of the Resource

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Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6973, as amended, and other laws, potentially liable parties may be obligated to implement response actions deemed necessary by EPA to protect the public health, welfare or the environment, and may be liable for all costs incurred by the government on responding to any release or threatened release at the site. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study (RI/FS), conducting a Remedial Design/Remedial Action (RD/RA), and other investigation, planning, response, and enforcement activities.

EPA has determined that release of hazardous substances (as defined by Section 101(14) of CERCLA) has occurred or may be occurring at properties owned by the companies that you represent and that there is a substantial threat of further releases of hazardous substances (as defined by Section 101(14) of CERCLA) from these properties. At the present time, arsenic, cadmium, lead, copper and zinc from these properties are contaminating and/or threatening to contaminate soils, surface water, groundwater, and ambient air in and around the Silver Bow Creek drainage, including Butte and Walkerville, Montana, downstream reaches of Silver Bow Creek through its confluence with Warm Springs Creek, and portions of the Clark Fork River. Residents of Butte, Montana, and environs may be exposed to elevated concentrations of hazardous substances in soils and solid wastes and to contaminated surface and groundwater. These elevated concentrations may present an imminent and substantial endangerment to health, welfare, and the environment.

#### SITE RESPONSE ACTIVITIES

At present, EPA is planning to conduct the following activities at the site:

1. Remedial Investigations (RI) to identify the local characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the site.
2. Feasibility Studies (FS) to evaluate alternative remedial actions to remove or contain hazardous substances, pollutants, and contaminants at the site.

EPA, in consultation with the State of Montana, has divided the Butte Area of the Silver Bow Creek/Butte Area Superfund site into four operable units for purposes of conducting RI/FS's. One or more separate RI/FS's shall be conducted for each of these operable units. The four operable units are as follows:

1. Butte Priority Soils Operable Unit  
Phase 1 Health  
Phase 2 General

This operable unit consists of former and active mining, milling, smelting, and related facilities and associated waste rock, tailings mill wastes, and contaminated soils in populated areas of Butte and Walkerville, Montana, outside the Silver Bow Creek 100 year floodplain. The operable unit is broken into two phases for remedial investigation purposes; phase 1 (health) and phase 2 (general). Phase 1 consists of evaluation of 38 residential areas and mining waste deposits which are in close proximity to these residential areas. Phase 2 consists of evaluation of areas within or in close proximity to the cities of Butte and Walkerville, including the previously mentioned 38 residential areas, which are impacted by mining and milling related wastes. This area generally consists of the area from the Missoula Gulch drainage eastward to the Berkeley Pit and south to the Silver Bow Creek floodplain, and the Clark Tailings/Timber Butte/Grove Gulch area. Phase 2 emphasizes the environmental impact of mining wastes on this area but will also address present and future health impacts and implications of future land uses including residential development.

## 2. Butte Mine Flooding Operable Unit

This operable unit consists of the flooding Berkeley Pit (a former open pit copper/molybdenum mine located in northeastern Butte, Montana), the flooding underground mine workings that are hydrologically connected to the Berkeley Pit, and associated alluvial and bedrock aquifers.

## 3. Butte Open Pit Mining and Milling Area Operable Unit

This operable unit consists of the open pit mining and associated milling operations and waste piles formerly owned and operated by the Atlantic Richfield Company/Anaconda Minerals Company and now owned and operated by Montana Resources, Incorporated, pursuant to Montana Department of State Lands Permit Numbers 30, 30A, 41, and 108 in northeastern Butte, Montana.

## 4. Butte Non-Priority Soils Operable Unit

This operable unit consists of former mining, milling, and smelting facilities and associated waste rock, tailings, mill wastes, and contaminated soils in unpopulated areas of Silver Bow County, Montana. The boundaries of this operable unit are not defined; however, they are preliminarily recognized as areas within the Silver Bow Creek Superfund site which are outside the Silver Bow Creek floodplain, the Priority Soils operable unit boundaries, and the Butte Open Pit Mining and Milling Area operable unit boundaries.



EPA has evaluated information in connection with the investigation of the site concerning persons who may be associated with it. Based on this evidence, EPA believes that the Burlington Northern Railroad Company is a potentially responsible party (PRP) with respect to the Silver Bow Creek/Butte Area Superfund site. Potentially responsible parties (PRPs) under CERCLA include current and former owners and operators of the site as well as persons who arranged for disposal of hazardous substances found at the site, or persons who accepted hazardous substances for transport to the site. Specifically, EPA has reason to believe that the Montana Western Railway Company is a past owner/operator of railroad properties in the Butte Priority Soils operable unit. According to the Montana Western Railway Company, your company is also a present owner (Enclosure 1). By this letter, EPA notifies the corporation that you represent of potential liability with regard to this matter and encourages you to voluntarily perform or finance those response activities that EPA determines are necessary at the site.

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the site. These past response actions include, but are not limited to, preliminary site investigation, hazardous ranking system scoring, potentially responsible parties search, forward planning activities, emergency removal actions, and community relations activities. EPA may expend additional funds for response activities at the site under the authority of CERCLA and other laws.

#### SPECIAL NOTICE AND NEGOTIATION MORATORIUM

You will receive an additional notice from EPA in the near future. The notice will inform you that EPA is using the CERCLA Section 122(e) special notice procedures to formally negotiate terms of an administrative order on consent pursuant to Sections 104 and 122 of CERCLA, 42 U.S.C. Sections 9604 and 9622 to conduct or finance site response activities related to the Remedial Investigation/Feasibility Studies associated with the previously listed operable units.

Under Section 122(e), EPA has the discretionary authority to use the special notice procedures if EPA determines that such procedures would facilitate an agreement between EPA and the PRP's and would expedite RI/FS actions at the site. Use of the special notice procedures triggers a moratorium on certain EPA activities at the site. The purpose of the moratorium is to provide a period of time when PRP's and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the site.

The moratorium for the RI/FS lasts for up to 90 days after the notice is issued. If a good faith offer is submitted by the PRPs within 60 days, another 30 days are automatically provided for completion of negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of the moratorium period, EPA may terminate the negotiation moratorium under Section 122(e)(4) of CERCLA. EPA is then authorized to commence such RI/FS actions as it deems appropriate. In the absence of an agreement with the parties to perform or finance the investigative activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of site expenditures or pursue unlimited enforcement action against the parties under Section 106 of CERCLA to compel performance of the activities.

The Silver Bow Creek/Butte Area site is very large and complex. There are a number of potentially responsible parties for each operable unit. These potentially responsible parties include: the past and present owners and operators of mining, milling, and smelting surface properties and associated contaminated surface industrial properties in Butte, Montana; present owners of underground mining claims associated with the flooding underground mine system; past and present owners and operators of railroad properties contaminated by and actually or potentially releasing hazardous substances, pollutants, and contaminants; and present owners of other properties contaminated by and actually or potentially releasing hazardous substances, pollutants, and contaminants.

The following parties have been identified as PRP's for the four previously listed operable units.

Butte Priority Soils Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Tzarina-Travona Mining Corporation
4. Mountain Con Mining Corporation
5. West Butte Metals, Inc.
6. Bluebird Mining Company
7. New Butte Mining, Inc.
8. Mr. Dennis R. Washington
9. Montana Resources, Inc.
10. Montana Western Railway Company, Inc.
11. Universal Royal Apex Limited
12. Union Pacific Railroad Company
13. State of Montana (Department of Commerce)
14. Butte/Silver Bow City and County Government
15. City of Walkerville, Montana
16. Atlantic Richfield Company
17. RARUS Railroad

18. Butte Historic Parks Railroad
19. Burlington Northern Railroad Company

Butte Mine Flooding Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Tzarina-Travona Mining Corporation
4. Mountain Con Mining Corporation
5. West Butte Metals, Inc.
6. Bluebird Mining Company
7. Yankee Mining Company
8. Eureka Mining Company
9. Black Rock Mining Company
10. New Butte Mining, Inc.
11. Mr. Dennis R. Washington
12. Montana Resources, Inc.
13. Atlantic Richfield Company

Butte Open Pit Mining and Milling Area Operable Unit

1. Central Butte Mining Corporation
2. North Butte Mining Company
3. Mountain Con Mining Corporation
4. Yankee Mining Company
5. Eureka Mining Company
6. Black Rock Mining Company
7. East Ridge Mining Company
8. New Butte Mining, Inc.
9. Mr. Dennis R. Washington
10. Montana Resources, Inc.
11. Atlantic Richfield Company

Butte Non-Priority Soils Operable Unit

The present ownership and mineral rights associated with this operable unit have not been fully researched. The Atlantic Richfield Company is a PRP and when the Operable Unit Specific Work Plan is developed for this Operable Unit at a future date, a complete description of present ownership and associated responsible parties will be available.

EPA would like to encourage negotiations among the PRP's and with EPA. If several PRP's are interested in conducting the RI/FS activities, it will be necessary to organize into a single representative body. To encourage this, EPA has enclosed a list of names and addresses of other PRP's who are also receiving this letter (Enclosure 2). Some PRP's have found it to be in their interest to participate in developing the RI/FS, because the RI/FS reports are key decision-making documents which determine

the ultimate remedy for cleaning up the site. Participation in the RI/FS would ensure that the PRP has a voice in the EPA decision-making process.

EPA in conjunction with the State of Montana conducted an introductory and organizational briefing of all interested PRP's on the upcoming RI/FS negotiations. The meeting was held on February 28, 1989 at the following location:

McDuff's Pancake and Steakhouse  
Conference Room  
2700 Harrison Avenue  
Butte, Montana  
9:00 am - 5:00 pm

Issues discussed at this meeting included the proposed administrative order on consent, operable units and workplans associated with them, a timetable of proposed activities, PRP's roles in conducting and implementing the workplans, and EPA's and the State of Montana's role in future site activities. A copy of the handout materials from the meeting is enclosed (Enclosure 3). We urge you to contact the other PRP's as soon as possible and join the effort to organize a PRP steering committee for the negotiations with EPA. Please send EPA a notice of your intent to cooperate with EPA and the other PRP's within one week of receipt of this letter.

#### REQUEST FOR INFORMATION

EPA is seeking to obtain information from you concerning the nature and extent of hazardous substances associated with the railroad properties in Butte formerly and presently owned or operated by your company and the ability of Burlington Northern Railroad Company to pay for or perform a cleanup at the site. This information request is made pursuant to section 104(e) of CERCLA as amended, 42 U.S.C. 9604(e). Section 104(e) provides EPA with the authority to collect information and documentation necessary to respond to a release or threatened release of hazardous substances, or otherwise enforce the provisions of CERCLA. Enclosed is a list of questions and requests related to areas and properties which are the subject of the evaluation. EPA hereby formally requires you to submit to it all information and documentation requested in the list of questions and requests enclosed with this letter as Enclosure 4.

Your response must be based on a review of all information available, including documents, interviews, and your best recollection of the events. If you identify or provide copies of records in response to the request, please describe the author of the records and the current location of the records, as well as the current custodian of the records. If in answering any of the above questions information was obtained through employee

interviews, so indicate in your letter and provide the names of the employees interviewed.

Pursuant to section 103(d) of CERCLA, as amended, 42 U.S.C. § 9603(d), it is unlawful for any person to knowingly destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any record which is or may be responsive to the request. You are also requested to supplement all responses if and when new documents or information become available.

Your response to this request must be submitted in person or by certified mail, return receipt requested, within 21 calendar days of your receipt of this letter, to:

U.S. Environmental Protection Agency  
Region VIII  
999 18th Street, Suite 500  
Denver, Colorado 80202-2405  
ATTENTION: Rex Callaway, 8RC

Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized by you to respond to this request. The notarized certificate must state that the response submitted to EPA is complete and contains all documents and information responsive to this request that are known to you following a complete and thorough review of all information and sources available to you. A suggested format for the notarized certificate is included with this request as Enclosure 5.

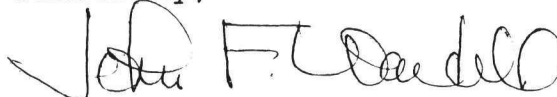
Any failure to comply with this request within the time specified may result in an enforcement action against you including the assessment of significant penalties.

EPA regulations concerning confidentiality of business information are set forth in Part 2, Subpart B, of Title 40 of the Code of Federal Regulations. In addition, section 104(e)(7) of CERCLA, as amended, 42 U.S.C. § 9607(e)(7), contains additional proscriptions concerning claims of business confidentiality in connection with this request. When a portion of the information submitted is entitled to confidential treatment, a confidentiality claim may be asserted in accordance with 40 C.F.R. section 2.203(b) and section 104(e)(7) of CERCLA. If EPA determines that the information so designated meets the criteria set forth in the above-referenced sections, the information will be disclosed only to the extent and by means of the procedures specified in 40 C.F.R. Part 2, Subpart B. EPA will construe the failure to furnish a confidentiality claim with your response to this letter as a waiver of that claim, and information may be made available to the public by EPA without further notice.



Because of the serious nature of this request, please give it your immediate attention. Comments or questions on this matter can be addressed to Sara Weinstock, (406) 449-5414 (technical) or Rex Callaway, (303) 294-7190 (legal).

Sincerely,

A handwritten signature in dark ink, appearing to read "John F. Wardell". The signature is fluid and cursive, with the first name "John" being more prominent.

John F. Wardell, Director  
Montana Office

Enclosures

cc: Jeff Desautels, ARCO  
Robert L. Duprey, 8HWM  
Dr. Sidney C. Pratt, MDHES  
Tom Eggert, MDHES  
Russ Forba, 8MO  
Rex Callaway, 8RC  
Dennis Washington, MRI  
J. W. Greene, MT Western Railway Co.  
Paul T. Keller, Universal Royal Apex Limited  
Nancy Roberts, Union Pacific Railroad Company  
John Craig, MT Dept. of Commerce  
Bill McCarthy, RARUS Railroad  
John Podobnic, Butte Historic Parks Railroad  
Don Peoples, Butte/Silver Bow Government  
Bernie Harrington, Walkerville, MT  
John Thorson, New Butte Mining, Inc.  
Frank Crowley, Montana Mining Properties, Inc.